

1 HOUSE BILL NO. 237

2 INTRODUCED BY E. CARNEY

3 BY REQUEST OF THE DEPARTMENT OF JUSTICE

4

5 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR A VOLUNTARY REGISTRY OF IN-HOME OR
6 PERSONAL CARE PROVIDERS FOR INDIVIDUALS WHO SUBMIT CRIMINAL HISTORY RECORD
7 INFORMATION FROM A BACKGROUND CHECK BASED ON FINGERPRINTS AND WHO HAVE NO FELONY
8 CONVICTIONS, PROTECTION ORDERS, WARRANTS, CONTEMPORANEOUS ARRESTS, OR
9 SUBSTANTIATED ALLEGATIONS OF ABUSE OR NEGLECT; PROVIDING AN APPROPRIATION; AND
10 PROVIDING AN EFFECTIVE DATE."

11

12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

13

14 NEW SECTION. **Section 1. Purpose.** The purpose of [sections 1 and 2] is to protect the elderly
15 and persons of all ages with disabilities from abuse, neglect, and criminal acts by in-home or personal care
16 providers. The safety of vulnerable individuals who are dependent on in-home or personal care services
17 will be improved by the establishment of a voluntary registry of in-home or personal care providers. The
18 voluntary registry will require that a fingerprint-based criminal history background check be conducted
19 through the state department of justice and the federal bureau of investigation and that a check of
20 department of public health and human services databases be made before a provider may qualify for
21 certification and inclusion in the registry.

22

23 NEW SECTION. **Section 2. Voluntary registry for in-home or personal care providers.** (1) There
24 is a voluntary registry for in-home or personal care providers administered by the department.

25 (2) An individual who performs in-home or personal care services may apply to the department
26 for inclusion in the registry. Prior to application for the registry, the individual must submit the public
27 criminal justice information from a background check by the federal bureau of investigation of national
28 criminal history records based on fingerprints submitted by the applicant to the state department of justice.
29 The individual seeking inclusion in the voluntary registry is responsible for all costs related to a background
30 check.

(3) The department of justice shall review the criminal history record information received by the applicant and determine if there are any felony convictions on the record or additional information on protection orders, warrants, or contemporaneous arrests. The department of justice shall provide the individual with the necessary information for submittal to the department on a form approved jointly with the department. The form must contain, at a minimum, relevant public criminal justice information, including the applicant's name and status regarding felony convictions, protection orders, warrants, or contemporaneous arrests. The individual shall submit the form with the application for the registry provided in subsection (2) to the department.

(4) In addition to the information submitted pursuant to subsection (3), the department shall review internal databases for any substantiated allegations of abuse or neglect. If the names do not appear with any substantiated allegations of abuse or neglect, felony convictions, protection orders, warrants, or contemporaneous arrests, the department shall certify the individual as of a certain date and include the individual in the registry.

(5) Inclusion in the registry does not provide any guarantee of future conduct regarding the certified individual but is only a certification that the information as provided by the applicant was free of felony convictions, protection orders, warrants, certain arrests as provided in subsection (6), or substantiated allegations of abuse or neglect under that specific name as of the date of certification. The department is not liable for detrimental reliance upon the information provided in a voluntary background check or inclusion in the voluntary registry.

(6) An individual's name may only be included in the registry for 2 years, and the individual must reapply and include information from a new fingerprint-based background check. An individual's name may be removed within the 2-year time frame if the individual is convicted of a felony or is named in a substantiated allegation of abuse or neglect. If, at the time that the background check was conducted, an individual has a contemporaneous arrest for an offense that may be considered a felony upon conviction, the department of justice may include that information on the approved form and the department may withhold the individual's name from the registry until final adjudication.

(7) The department may maintain a list of persons who have been denied certification for inclusion in the voluntary registry and who are permanently disqualified from inclusion in the voluntary registry because of the presence of a felony conviction, protection order, or warrant in their criminal history record or a substantiated allegation of abuse or neglect.

(8) The department shall maintain a process by which individuals who need in-home or personal care services or providers of in-home or personal care services may access information on individuals who are seeking employment as in-home or personal care providers.

(9) The department shall disseminate information to consumers, employers, and providers of in-home or personal care services about the voluntary registry, the process for application and inclusion in the registry, and the process for accessing information from the voluntary registry.

NEW SECTION. Section 3. Appropriation. (1) There is appropriated \$125,184 from the general fund to the department of public health and human services for the biennium ending June 30, 2003, to administer a voluntary in-home or personal care provider registry.

(2) There is appropriated \$65,000 from the general fund to the department of justice for the biennium ending June 30, 2003, to process criminal history background checks in coordination with the voluntary in-home or personal care provider registry.

NEW SECTION. Section 4. Codification instruction. [Sections 1 and 2] are intended to be codified as an integral part of Title 52, chapter 3, and the provisions of Title 52, chapter 3, apply to [sections 1 and 2].

NEW SECTION. Section 5. Effective date. [This act] is effective July 1, 2001.

- END -